

ADVISORY OPINION 96-005

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

October 4, 1996

Hon. Phyllis A. Sower
Kentucky Coalition for Life
219 St. Clair Street, Suite 1
Frankfort, Kentucky 40601

Dear Ms. Sower:

This is in response to your September 4, 1996, letter requesting an advisory opinion regarding whether Kentucky Right to Life Coalition ("Coalition") may conduct a statewide candidate survey relating to political candidates, publish the results of the Coalition's survey or publish the results of a survey conducted by one of the four non-profit corporations ("non-profit corporations") which associate to form the Coalition. You describe the Coalition as an unincorporated association composed of four non-profit corporations which support pro-life issues and which associate periodically for certain projects but otherwise are autonomous. The non-profit corporations composing the Coalition are: Northern Kentucky Right to Life Committee, Inc., Ashland Friends for Life, Inc., Action Life League of Western Kentucky, Inc., and Capital Area Right to Life, Inc.

You further state that the Coalition is completely independent of any candidate or individual campaign and will not be making a contribution to any candidate. Your statement of facts fails to indicate whether the non-profit corporations which compose the Coalition or any of their agents are involved with any candidate or campaign, or would have knowledge of campaign strategy through their officers or directors, such that their participation in the expenditure would not have the independence required by KRS 121.015(13). Furthermore, the functional association of four non-profit corporations in an unincorporated association does not alter their status as non-profit corporations for purposes of regulating the expenditure of corporate funds under Kentucky's campaign finance statutes. (See KRS 121.025-.035.)

In response to your questions, there is no campaign finance statute which prohibits the Coalition from conducting its own statewide survey of candidates. Only when the Coalition expends its resources, either by "contribution" or through an "independent expenditure" to "advocate the election or defeat of a clearly identified candidate or issue which will appear on the ballot" will campaign finance statutes apply. (KRS 121.015(6), (13).) (See Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, 702 (1976).) Therefore, if the Coalition does nothing other than report or distribute its survey results without presentation of the survey results in a manner which would expressly advocate the election or defeat of a particular candidate, there would be no violation of KRS Chapter 121 or Chapter 121A regardless of whether the survey was paid for with corporate funds. Kentucky Registry of Election Finance v. Louisville Bar Association, Ky.App., 579 S.W.2d 622 (1978).

If the survey expressly advocates the election or defeat of a clearly identified candidate, and the costs of preparation and distribution are paid for by the Coalition directly or through its non-profit corporation members, and the expenditure is made without any coordination, consultation, or cooperation with any candidate or any authorized person acting on behalf of any candidate within the meaning of KRS 121.015(13), the expenditure would be an "independent expenditure," to be reported to the Registry pursuant to KRS 121.150 if it exceeds \$500. (See Federal Election Com'n v. Mass. Citizens for Life, 479 U.S. 238, 93 L.Ed.2d 539, 107 S.Ct. 616 (1986).)

If the survey results were reported in a manner which expressly advocates the election or defeat of a clearly identified candidate, but without the independence required by KRS 121.015(13), the expenditure would be a "contribution" within the meaning of KRS 121.015(6), which must be reported to and by the candidate's committee pursuant to KRS 121.150(1). If corporate funds were used in making that contribution, however, it would be illegal under KRS 121.025, even if the source of the corporate funds were a non-profit corporation.

If you have further questions, please feel free to contact the Registry at (502) 573-2226.

Sincerely,

Rosemary F. Center
General Counsel

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